

DG 01-104

ENERGYNORTH NATURAL GAS, INC.  
D/B/A KEYSpan ENERGY DELIVERY NEW ENGLAND

Elimination of EnergyNorth, Inc.

Order Nisi Approving Elimination of EnergyNorth, Inc.

O R D E R N O. 23,786

September 26, 2001

I. PROCEDURAL HISTORY

On July 27, 2001, KeySpan Corporation (KeySpan), the parent company of EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England (Company), filed with the New Hampshire Public Utilities Commission (Commission) its intent to eliminate two intermediate level entities, Eastern Enterprises (Eastern) and EnergyNorth, Inc., (ENI) on or before October 1, 2001.

This filing replaced an earlier, and almost identical, filing KeySpan made on May 2, 2001. The earlier filing was retracted while KeySpan reconsidered changes to its corporate structure.

On September 20, 2001, KeySpan retracted its' request for approval of the elimination of Eastern Enterprises and only submits for Commission approval the elimination of ENI. KeySpan proposes eliminating ENI by merging it with and into EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy

Delivery New England (ENGI). EnergyNorth Natural Gas, Inc. (ENGI) would become a direct subsidiary of Eastern, while Eastern will remain a direct subsidiary of KeySpan.

KeySpan submitted with their filing the affidavit of Dennis Carroll, Vice President of ENGI, who stated the elimination of ENI as intermediate holding company would not have an adverse effect on the rates, terms, service, or operations of ENGI.

On August 13, 2001, Commission Staff submitted a letter in support of Keyspan's proposal. Under KeySpan's previous filing, the assets of ENI were to be merged into KeySpan. In the current proposal, ENI's assets will be merged into ENGI. It is Staff's position that the placement of ENI's assets in ENGI is more appropriate, as these assets had previously been supported by customer rates.

Staff also noted it believed express Commission approval was required for the elimination of ENI because RSA 374:33 requires this review and the public interest finding pursuant to RSA 369:8, II (b) in Order No. 23,470 did not expressly cover elimination of ENI.

## **II. COMMISSION ANALYSIS**

As the Commission has previously held in Orders 23,308 and 23,470, the merger representations that no adverse effect on the rates, terms, service or operation of the

utility will occur are not sufficient to satisfy the statutory requirements of RSA 369:8, II. The obligation to verify no adverse effect is consistent with the Commission's general duty under RSA 374:4 to keep informed as to how regulated utilities are managed and operated. Thus, under the public interest standard of RSA 374:33 and under the "no adverse effect" standard of RSA 369:8 where a utility or public utility holding company seeks to acquire, directly or indirectly, a jurisdictional utility, the Commission must determine that the proposed transaction will not harm ratepayers. This determination remains a statutory requirement. We applied this analysis in the acquisition docket, No. 99-193, involving KeySpan and Eastern's acquisition of EnergyNorth Natural Gas, Inc. Docket No. 01-104 is essentially a continuation of that acquisition and we apply the same analysis here.

On May 8, 2000, the Commission, by Order No. 23,470 (Docket DG 99-193), approved Eastern Enterprises and KeySpan Corporation's acquisition of EnergyNorth, Inc. and ENGI. The Commission also approved in that Order a Settlement Agreement concerning the merger. The Settlement Agreement was dated March 28, 2000 and was signed by KeySpan, Eastern Enterprises, EnergyNorth, Inc., ENGI, the Office of the Consumer Advocate and Commission Staff. The United Steelworkers-Local 12012 and

the

Governor's Office of Energy and Community Services participated in the docket but did not sign the Settlement Agreement.

In Order No. 23,470, the Commission discussed the future of ENGI:

We believe the Settlement Agreement, which is very comprehensive, provides an appropriate regulatory framework within which ENGI operations may be integrated with the operations of Eastern and Keyspan. While EnergyNorth will remain a separate legal entity with its own records, accounts, rates and debt, the Joint Petitioners will operate as a single company in order to maximize operating efficiency and improve customer service. Order at 15.

While it may be true that the Joint Petitioners have not provided final details with regard to organizational structure, positions and names of individuals who will occupy those positions, at this point in a merger process, that is not surprising. The Joint Petitioners have committed to keeping the Commission Staff informed of their ongoing activities in this regard. The Joint Petitioners have further agreed that there will be no changes in the way ENGI operates, without prior Commission notification. Order at 16.

The Commission has reviewed KeySpan's filing explaining its post-merger corporate restructuring and finds, pursuant to RSA 374:33, that approval of the elimination of ENI is consistent with the public good. We find that the proposed corporate structure will not impair our continued exercise of our supervisory authority over ENGI.

Under the proposed corporate structure ENGI's

operations are to remain unchanged. Separate books and records

will continue to be maintained for ENGI to facilitate the Commission's review and oversight of ENGI and its operations in New Hampshire. As directed in Order No. 23,470, there are to be no changes in the way ENGI operates without prior Commission notification.

The elimination of ENI will require re-filing of the Outsourcing Agreement presently between EnergyNorth, Inc. and Boston Gas Company.

**Based upon the foregoing, it is hereby**

**ORDERED NISI**, that KeySpan's proposed elimination of EnergyNorth, Inc. on or before October 1, 2001 is APPROVED; and it is

**FURTHER ORDERED**, that KeySpan shall file a new Outsourcing Agreement to replace the existing agreement between Boston Gas Company, Inc. and EnergyNorth Inc. which will become ineffective after October 1, 2001; and it is

**FURTHER ORDERED**, that KeySpan shall cause a copy of this Order Nisi to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than October 3, 2001 and to be documented by affidavit filed with this office on or before October 10, 2001; and it is

**FURTHER ORDERED,** that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than October 8, 2001; and it is

**FURTHER ORDERED,** that this Order Nisi shall be effective October 1, 2001, unless the Commission provides otherwise in a supplemental order issued by October 15, 2001.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of September, 2001.

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Douglas L. Patch  
Chairman

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Susan S. Geiger  
Commissioner

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Nancy Brockway  
Commissioner

Attested by:

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Thomas B. Getz  
Executive Director and Secretary